

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MONIQUE EPPERSON
individually and on behalf of DV and SV, minors,

Plaintiff,

vs.

JUDGE MATHEW HARTER, *et al.*,

Defendants.

Case No. 2:20-cv-01613-RFB-VCF

ORDER

APPLICATION TO PROCEED *IN FORMA PAUPERIS* (ECF NO. 1); COMPLAINT (ECF NO. 1-1)

Before the Court are pro se plaintiff Monique Epperson's application to proceed *in forma pauperis* (ECF No. 1) and complaint (ECF No. 1-1). Epperson's (1) in forma pauperis application is granted; (2) her complaint is dismissed without prejudice with leave to amend.

DISCUSSION

Epperson's filings present two questions: (1) whether Epperson may proceed *in forma pauperis* under 28 U.S.C. § 1915(e) and (2) whether Epperson's complaint states a plausible claim for relief.

I. Whether Epperson May Proceed In Forma Pauperis

Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action "without prepayment of fees or security thereof" if the plaintiff submits a financial affidavit that demonstrates the plaintiff "is unable to pay such fees or give security therefor." Plaintiff's application to proceed in forma pauperis includes a declaration under penalty of perjury that plaintiff is unable to pay the costs of these proceedings. (ECF No. 1). Plaintiff's affidavit states that she makes \$1,106.00 bi-weekly and that she has \$1,600.00 in savings. (*Id.*) Plaintiff's application to proceed in forma pauperis is granted.

II. Whether Epperson's Complaint States a Plausible Claim

a. Legal Standard

Because the Court grants Epperson's application to proceed *in forma pauperis*, it must review Epperson's complaint to determine whether the complaint is frivolous, malicious, or fails to state a plausible claim. 28 U.S.C. § 1915(e)(2)(B). Federal Rule of Civil Procedure 8(a)(2) provides that a complaint must contain "a short and plain statement of the claim showing that the [plaintiff] is entitled to relief." The Supreme Court's decision in *Ashcroft v. Iqbal* states that to satisfy Rule 8's requirements, a complaint's allegations must cross "the line from conceivable to plausible." 556 U.S. 662, 680 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547, (2007)). Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. A complaint should be dismissed under Rule 12(b)(6) "if it appears beyond a doubt that the plaintiff can prove no set of facts in support of her claims that would entitle him to relief." *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992).

"[A] pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). If the Court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

It is well-settled that federal district courts do not have appellate jurisdiction over a state court, whether by direct appeal, mandamus, or otherwise. See *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 414, 44 S. Ct. 149, 149 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303 (1983) (Federal courts do not have jurisdiction to sit in direct review of state court decisions or procedures.) The United

1 States Supreme Court has repeatedly held that judges and those performing quasi-judicial functions are
2 absolutely immune from damages for acts performed within their judicial capacities. *Stump v.*
3 *Sparkman*, 435 U.S. 349, 360 (1978); *Nixon v. Fitzgerald*, 457 U.S. 731, 766 (1982). Judges are
4 absolutely immune from a civil suit for damages under § 1983. See *Imber v. Pachtman*, 424 U.S. 409,
5 435 (1976).

6 **b. Plaintiff's Complaint**

7 Epperson's complaint is styled as a civil rights complaint, on behalf of herself and her minor
8 children, regarding proceedings in family court. (ECF No. 1-1). She alleges that Judge Harter, who
9 presided over her family law case, violated her civil rights in those proceedings. (*Id.*) She also alleges
10 that defendants (1) attorney Mandy McKellar, who represented her child's father; (2) therapist Claudia
11 Schwarz; (3) therapist Donna Gosnell all violated her and her children's rights in those proceedings
12 because they "influenced" Judge Harter. She also alleges that her child's father, Antonio Velasco,
13 violated her rights and children's rights by "conspiring" with Judge Harter. (*Id.* at 14). Plaintiff alleges
14 she is entitled to 1 million dollars in damages because of these violations of her rights. (*Id.* at 17).

15 All plaintiff's claims are in relation to the actions of Judge Harter during a judicial proceeding
16 and the attorney, therapists, and her child's father's actions during the family court proceeding. Judge
17 Harter is absolutely immune from a civil suit for damages under § 1983. Even under the liberal pleading
18 standard, plaintiff's complaint is 1) fashioned as an appeal of a state court proceeding, which is outside
19 this Court's jurisdiction, and 2) her allegations are related to judicial actions which require immunity.
20 The Court will give the plaintiff one opportunity to amend her complaint.
21

22 ACCORDINGLY,

23 IT IS ORDERED that Epperson's application to proceed in forma pauperis (ECF No. 1) is
24 GRANTED.
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1 IT IS FURTHER ORDERED that the Clerk of Court shall file the Complaint (ECF No. 1-1).

2 IT IS FURTHER ORDERED that Epperson's complaint (ECF No. 1-1) is DISMISSED
3 WITHOUT PREJUDICE.

4 IT IS FURTHER ORDERED that Epperson has until Friday, November 6, 2020 to file an
5 amended complaint addressing the issues discussed above. Failure to timely file an amended complaint
6 that addresses the deficiencies noted in this Order may result in a recommendation for dismissal with
7 prejudice.

8 IT IS FURTHER ORDERED that if an amended complaint is later filed, the Clerk of the Court is
9 directed **NOT** to issue summons on the amended complaint. The Court will issue a screening order on
10 the amended complaint and address the issuance of summons at that time, if applicable. *See* 28 U.S.C. §
11 1915(e)(2).

12 **NOTICE**

13 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
14 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
15 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
16 may determine that an appeal has been waived due to the failure to file objections within the specified
17 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).

18 This circuit has also held that (1) failure to file objections within the specified time and (2)
19 failure to properly address and brief the objectionable issues waives the right to appeal the District
20 Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d
21 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).
22 Pursuant to LR IA 3-1, the plaintiff must immediately file written notification with the court of any
23 change of address. The notification must include proof of service upon each opposing party's attorney,
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1 or upon the opposing party if the party is unrepresented by counsel. Failure to comply with this rule may
2 result in dismissal of the action.

3 IT IS SO ORDERED.

4 DATED this 9th day of October 2020.



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6 CAM FERENBACH
7 UNITED STATES MAGISTRATE JUDGE
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